THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.11485 OF 2005

DATED: 30-08-2007

BETWEEN

Mohd. Munawar Ahmed Sohail,
S/o. Mansoor Ahmed, Occ: Business,
R/o. H.No.11-5-152/9, Red Hills,
Hyderabad.

...PETITIONER

AND

The Commissioner of Police,
Basheerbagh, Hyderabad and
others.

...RESPONDENTS

ORDER:

Petitioner seeks,

(i) Writ of Certiorari calling for the records relating to O.S.No.1562 of 2005 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad and quash the order of ad-interim injunction passed in I.A.No.271 of 2005 and the order in I.A.No.345 of 2005 to provide necessary police protection for due implementation of ad-interim injunction order granted in I.A.No.271 of 2005 both dated 28.04.2005 in favour of the eighth respondent herein. The eighth respondent has obtained the interim orders illegally by playing fraud on the Court for evasion of the Court fee and also by corruption in abuse of process of law and the said interim orders are non-est in law.

(ii) Writ of Prohibition prohibiting the sixth respondent Court to forbear from proceeding further in the suit proceedings for want of inherent pecuniary jurisdiction.

(iii) Writ of Mandamus to direct the respondents 1 to 3 i.e. The

Commissioner, Deputy Commissioner and Assistant Commissioner of Police respectively, to initiate action against the fifth respondent – Circle Inspector of Police and to direct the ninth respondent – Home Secretary, State of AP, to pay compensation to him for evicting him illegally by the respondents 4, 5, 7 and 8 and to take appropriate action against the seventh respondent – Judicial Officer.

2. The eighth respondent herein is the plaintiff/petitioner and the writ-petitioner is the first defendant/first respondent in the aforesaid suit and interlocutory applications respectively and the respondents 10 to 12 are the defendants 2 to 4 in the suit.

3. Though the Court of the IV Junior Civil Judge, City Civil Court and the Presiding Officer of the Court, Mr. S. Chandrasekhar, were shown as respondents 6 and 7 in the writ petition, the petitioner himself deleted them from the array of respondents in view of the office objections at the time of filing the writ petition on 18.05.2005. Subsequently the petitioner filed application in WPMP.No.11876 of 2007 seeking to implead the seventh respondent herein as sixth respondent, which is dismissed, as per the judgment of Supreme Court in **SAVITRI DEVI Vs. DISTRICT JUDGE**[1] wherein the Supreme Court deprecated impleadment of judicial officers, disposing the civil proceedings, as parties to the writ petitions under Article 226 of the Constitution of India.

4. Brief facts of the case are:

(a) The land admeasuring 535.08 sq. meters bearing plot No.5 situated at Somajiguda, belongs to one Mohammed Hussain Khan, who executed a General Power of Attorney in favor of one N. Ashok Kumar, to do all necessary things to protect, alienate or develop the said property in any manner vide GPA dated 11.02.1991. The GPA holder of Mohammed Hussain Khan entered into a development agreement dated 15.11.2000 with V. D. Samuel and M. Y. Maharshi, wherein N. Ashok Kumar was referred to

as owner and the latter were referred to as builders. The said development agreement discloses that the owner is the agreement holder of the said property and he is in possession of the same and entitled to develop and sell the same.

The sanction plan was obtained in 1987 and as on the date of agreement five slabs were laid and brickwork was yet to be completed. The builder is entitled to 55% share and the owner is entitled to 45% share and as per the Schedule – II of the development agreement the owner is entitled to

(1) Flat No.G2 South/West, G3 North/East in Ground floor;

(2) Flat No.101 North/West and Flat No.104 South/West, I floor;

(3) Flat No.202 South/West, Flat No.203 North/East II floor and

(4) Flat No.302 South/West in Third floor and

45% of car parking space in the cellar.

(b) Out of the two builders, Mr. M. Y. Maharshi entered into a Memorandum of Understanding (MOU) dated 05.09.2001 with Md. M. A. Sohail – writ petitioner. As per the MOU, M. Y. Maharshi is described as the builder and a party to the development agreement executed by N. Ashok Kumar, who is entitled to 45% share in the entire schedule property and the builder is entitled to 55% share and the construction over the said property is under progress and partial unfinished structure is standing on the land. The petitioner paid a sum of Rs.50,000/- and M. Y. Maharshi accepted the said sum of Rs.50,000/- on the condition that he would pay a sum of Rs.100/- per square feet on his 55% share in the entire project, provided the petitioner develops the entire property with his funds to receive Rs.100/- per square feet and the petitioner is entitled to get back the investment made by him. M. Y. Maharshi and the petitioner are entitled to be present at the time of receiving the sale proceeds and the petitioner is also entitled to negotiate with prospective buyers or with the third parties in the open market. As per clause (6) of MOU the petitioner shall supervise the construction for speedy execution of the venture. Thus, the MOU goes to

show that except his obligation to invest money required for completion of the building and the right to receive Rs.100/- per square feet on the share of M. Y. Maharshi apart from the investment made by him, the petitioner has got no right of possession except to supervise the construction for speedy execution of venture.

5. It appears that certain disputes arose between M. Y. Maharshi and the petitioner, as such the petitioner filed a suit in O.S.No.883 of 2005 for injunction against the respondents 8 and 10 to 12 herein from dispossessing him of the said property. In the suit, it was alleged that one Mohd. Hussain Khan was the original owner of the property in question and he appointed N. Ashok Kumar as his GPA, who in turn entered into an agreement with M. Y. Maharshi for the purpose of construction of multi-storied building and he is entitled to 55% of the said property. The said Maharshi for the completion of construction of the building executed MOU dated 05.09.2001 according to which the petitioner herein is entitled to Rs.100/- per square feet in the 55% share of Maharshi. It is stated that there was an oral agreement in favour of the petitioner for the sale of flats 203 and 303 in the said property, but in the absence of the petitioner, the defendants in the said suit i.e. Maharshi, N. Ashok Kumar and V. D. Samuel broke open the lock of flat No.203 and committed theft, therefore, a criminal complaint was lodged based on which a case in Cr.No.95 of 2005 was registered. It is stated that the defendants therein were interfering with the possession of the petitioner, therefore, the said suit was filed for grant of a decree restraining the defendants from interfering with the peaceful possession and enjoyment of the petitioner and the suit was valued as per the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (for short 'the Act') for the purpose of perpetual injunction based on notional value.

6. The eighth respondent herein – Maharshi also filed a suit in O.S.No.1562 of 2005 on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction valuing the suit under Section 26 (C) of

the Act to restrain the petitioner herein and three others namely R. Thukaram, G. Shanker and Smt. G. Kamala from interfering with his peaceful possession and enjoyment over the said property. It is alleged in the suit that the original owner of the said property executed GPA in favour of N. Ashok Kumar, who in turn entered into a development agreement dated 15.11.2000 in his favour, as such he is entitled to 55% share in the said property after completion of the venture. The petitioner herein, a labour contractor, entered into an MOU with him on 05.09.2001 for construction of the walls in all floors for which he was to be paid Rs.100/- per square feet and the petitioner is liable to invest in construction material and labour. The defendants 2 to 4 in the suit are the associates of the petitioner herein. The petitioner started construction in the month of September 2001 and carried work for two months and thereafter he neglected and altogether stopped the work. Even after repeated requests, the petitioner failed to resume the work and therefore, the MOU was cancelled and accounts were settled. It is stated that Maharshi invested huge amounts and also completed the construction by engaging another contractor and most of the flats have been sold away by the original owner and developer jointly and some are yet to be sold. It is stated that though no money was payable to the petitioner, he was illegally demanding money and creating nuisance in the suit schedule property by abusing and threatening the flat owners and demanding them to vacate the flats. The petitioner is influential person having access with antisocial elements and he lodged a false complaint against him and due to pressure brought on the police,

a criminal case was registered. On 13.03.2005, the petitioner with antisocial elements tried to trespass into the main complex with an intention to grab flat Nos.203 and 303 and accordingly, he filed a suit to restrain the petitioner and his associates from interfering with his peaceful possession and enjoyment over the suit schedule property. Pending suit, I.A.No.271 of 2005 for grant of temporary injunction and I.A.No.345 of 2005 for police aid were filed, which were ordered by impugned orders dated 28.04.2005 after hearing both the

parties.

7. Sri D.V. Sitharam Murthy, learned counsel for the petitioner submits that the suit filed before the Junior Civil Judge is not maintainable as the value of the suit schedule property is much higher than pecuniary jurisdiction to entertain the suit by the Junior Civil Judge, therefore, it could have been filed before a District Judge or Senior Civil Judge, therefore, there is evasion of Court fee and the impugned orders are substantively and procedurally ultravires, apart from playing fraud and corruption in abuse of process of law. Therefore, the IV Junior Civil Judge has no pecuniary jurisdiction to try the suit, as such, the petitioner is entitled to seek a Writ of Prohibition forbearing the IV Junior Civil Judge from proceeding with the suit.

He further submits that under the guise of the impugned orders,

the police is illegally trying to dispossess the petitioner, therefore, he is entitled to compensation apart from seeking disciplinary action against the concerned police officials as well as the Judicial Officer.

It is stated that the petitioner invested Rs.56 lakhs and he is entitled to get back his investment apart from Rs.100/- per square feet on the share of the builder. The IV Junior Civil Judge has no territorial jurisdiction as the property exceeds the pecuniary limits, therefore, the valuation of the suit under Section 26(C) of the Act is incorrect but it should have been valued under Section 24(d) of the Act.

Serious allegations have also been made against the Presiding Officer, Mr. S. Chandrasekar, stating that he demanded illegal gratification of Rs.2 lakhs for doing a judicial favour and agreed to do the same for a sum of Rs.1.5 Lakhs, therefore, the petitioner alerted the Director General of ACB, but as permission could not be obtained from this Court to trap him, the said attempt could not be materialized. It is stated that impugned interlocutory orders passed by the Judicial Officer are illegal, malafide and fraudulent.

8. It is not in dispute that initially exparte injunction orders were granted later after contest only the IAs were allowed by impugned orders dated

28.04.2005. The question that was considered by the trial Court was as to whether the plaintiff/eighth respondent herein was entitled for temporary injunction and police aid.

9. Learned counsel for the petitioner further submits that as per the MOU the petitioner is entitled to work, therefore, his entry into the premises is not illegal and his payment of Rs.50,000/- was not disputed and the documentary evidence goes to show that he invested huge amounts, as such, he is physically claiming possession over flat Nos.203 and 303 and when Maharshi tired to interfere with his possession and committed theft, the police registered a case, on a complaint filed by the petitioner. It is further stated that the nature of possession has to be determined finally in the suit, therefore, the trial Court ought not to have granted interim injunction. It is stated that even a trespasser is entitled to injunction against the owner and the owner has to file a suit for eviction only and the person in possession has to be evicted by due process of law alone; without proving the fact that the petitioner was not in possession, the plaintiff/eighth respondent is not entitled for an order of injunction. The observation of the trial Court that the plaintiff was in lawful possession and enjoyment of the suit schedule property and if at all the petitioner is in possession, it amounts to trespass and cannot be treated as lawful possession, is illegal and unsustainable. It is further stated that the writ petition is maintainable on the file of this Court seeking a Writ of Certiorari as this Court has got supervisory jurisdiction over the subordinate Courts under Articles 226, 227 and 235 of the Constitution of India.

He further submits that as per the judgment of the Supreme Court in **SUYRA DEV RAI v. RAM CHANDER RAI**[2] at Para 14 where the Courts have acted without jurisdiction, or in excess of its jurisdiction and if the error is manifest and apparent on the fact of the proceedings and when it is based on clear ignorance or disregard of the provisions of law a writ of certiorari is maintainable. He further submits that as per the judgment of the Supreme

Court in **SYED YAKOOB v. RADHAKRISHNAN**[3] at Para 7 a Writ of Certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ can be issued if the Courts below act illegally or improperly. Therefore, it is sated that Writ of Certiorari against such injunction orders is maintainable.

10. On the other hand, Sri Vedula Venkataramana, learned counsel appearing for the eighth respondent/plaintiff submits that suit for injunction was rightly valued under Section 26(c) of the Act, as under Section 26(c) of the Act in respect of the suits for injunction where the subject matter of the suit has a market value or not, the fee shall be computed on the amount at which the relief sought is valued or at which such relief is valued by the Court, whichever is higher.

The contention of the learned counsel for the petitioner that the suit ought to have been valued under Section 24(d) of the Act, has no locus to stand as the said provision is applied to a suit for declaration. The present suit is not a suit for declaration of any right, title or possession but it is the case of the plaintiff that he is in legal possession and therefore, the writ-petitioner has no legal right to hold possession, as possession was not given to him but he was just a labour contractor; therefore, his possession as a labour contractor is not at all a possession in the capacity of the owner or he has any right or title to claim possession.

11. So far as the suits for injunctions are concerned, not doubt, it is always open for the Court to value the suit and admittedly, when the petitioner filed a similar suit for perpetual injunction, he valued the suit under Section 26(c) of the Act only, therefore, valuing the suit for similar perpetual injunction filed by the eighth respondent/plaintiff in O.S.No.1562 of 2005 on a notional value of the relief for grant of injunction under Section 26(c) of the Act, cannot be said to be illegal and arbitrary and that the said Court has no pecuniary jurisdiction. Therefore, I am of the opinion that the petitioner is not entitled for a Writ of Prohibition as sought for.

12. Insofar as the personal allegations made against the Presiding Officer are concerned, admittedly disciplinary proceedings are pending against him on a complaint lodged by the petitioner before this Court, therefore, any opinion expressed with regard to the said allegations may not be just and proper, as this Court cannot conduct an enquiry and come to a conclusion, more so, when a specific enquiry has been initiated and pending. Therefore, I am not expressing any opinion as to whether the impugned orders have been tainted with any prejudice, oblique motive, illegality, dishonest intention, any element of corruption etc. as these are matters to be enquired into by the enquiry officer. Therefore, I am not inclined to call for the records relating to the complaint dated 17.05.2005 and also the material including the conversation recorded in the tape.

13. Learned counsel for the eighth respondent further submits that even as per the development agreement, the developers are
V. D. Samuel and M. Y. Maharshi, therefore, Maharshi alone has no right to part with the possession of the said property. As per the development agreement flat Nos.202, 203 and 302 apart from other flats belong to the owner, therefore, even the eighth respondent cannot have exclusive right and title over flat No.203 claimed by the petitioner. In fact, flat No.202 was already sold by registered sale deed dated 30.11.2004 executed by N. Ashok Kumar, GPA holder of the original owner and M. Y. Maharshi, one of the developers, in favour of B. Visalakshi. It is stated that as per MOU the petitioner is entitled to supervise the construction for speedy execution of the venture alone but he has no right in any manner except a limited right to recover any investment made and to recover the so-called Rs.100/- per square feet on the share of Maharshi from Maharshi alone. Even Maharshi has no exclusive right and possession and he has not at all parted his right while developing the said property even under the MOU in favour of the petitioner. Therefore, it is stated that the civil Court rightly refused to grant injunction in the suit filed by the petitioner and on the other hand, rightly

granted injunction, after hearing the parties, in the suit filed by the eighth respondent, as the petitioner has no right to interfere in any manner with regard to possession of any of the flats or the suit schedule property.

14. Learned counsel for the eighth respondent further submits that under Section 11 of the Indian Contract Act, 1872, the eighth respondent has no right to enter into a contract with the petitioner except the right to complete the venture and so as to fulfill his obligation under the development agreement to complete the building he entered into an MOU with the petitioner, without parting his possession, to complete the work by making use of his services, who is in the nature of labour contractor alone. It is stated that the petitioner is an agent of one of the developers and the agent cannot have any right of possession except his right to receive the investment.

It is stated that the petitioner is a third person to the real owner, therefore, he is an agent to the eighth respondent; therefore, an agent cannot have any right against the real owner. Therefore, it is stated that the petitioner has no right to interfere with the possession and enjoyment of the eighth respondent/plaintiff, in fact, the petitioner has got a limited right but not absolute right over the suit schedule property.

15. Admittedly, the suit schedule property belongs to Mohd. Hussain Khan and his GPA holder entered in development agreement with

V.D. Samuel and M. Y. Maharshi, therefore, the developers alone cannot transfer any right of the said property, in fact, there is no transfer of any right in the MOU in favour of the petitioner giving him possession in any manner. Merely because the petitioner was carrying on the construction work, he cannot claim possession over the said property.

16. In view of the aforesaid facts and circumstances of the case,

I am of the opinion that the scope of judicial review to issue a Writ of Certiorari against the impugned orders of the civil Court is limited, i.e.

if the said orders are passed without jurisdiction or in excess of jurisdiction. I am of the prima facie opinion that a Writ of Certiorari sought for is not maintainable as there is no error of jurisdiction or excess of its jurisdiction in passing the impugned orders.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

August , 2007
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[1] (1999) 2 SCC 577

[2] (2003) 6 SCC 675

[3] AIR 1964 SC 477